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In the Supreme Court of the United States

OCTOBER TERM, 1974

GENERAL DYNAMICS CORPORATION, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

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On February 25, 1974, the Equal Employment Opportunity Commission brought this action under Section 706(f)(1) of the Civil Rights Act of 1964, as amended, 42 U.S.C. (Supp. III) 2000e-5(f)(1), in the United States District Court for the Northern District of Texas against petitioner General Dynamics Corporation, petitioner International Association of Machinists and Aerospace Workers,

AFL-CIO, and several local unions that are parties to collective bargaining agreements with General Dynamics at its Fort Worth facility. The complaint alleged that General Dynamics engaged in unlawful employment discrimination on the basis of race, sex, and national origin by restricting the employment opportunities of blacks, females, and Spanish surnamed persons at two of its Texas facilities.

The underlying administrative charges, upon which the action was based, were filed with the Commission between 1967 and February 1973 by individual employees of General Dynamics.

The district court dismissed the complaint on the ground that it was not filed within 180 days after the underlying administrative charges were filed with the Commission (GD Pet. App. A1-A20; IAM Pet. App. A5-A21). The court of appeals reversed (GD Pet. App. A21-A22; IAM Pet. App. A1-A2). It held—on the authority of its prior decision in *Equal Employment Opportunity Commission* v. *Louisville and Nashville R. Co.*, 505 F.2d 610, pending on petition for a writ of certiorari, No. 74-1294—that "the passage of 180 days from the time the charge was filed with the Commission did not bar the Commission from filing suit to enforce the Act" (GD Pet. App. A22; IAM Pet. App. A2).

The decision of the court of appeals is correct, and further review is not warranted. Petitioner's sole contention, that Section 706(f)(1) imposes a 180-day limitation on the Commission's authority to file suit if conciliation efforts fail, has been correctly rejected by every court of appeals that has considered the issue. *Equal Employment Opportunity Commission* v. *E.I. du Pont de Nemours & Co.*, C.A. 3, No. 74-1677, decided May 9, 1975; *Equal Employment Opportunity Commission* v. *Cleveland Mills Co.*, 502 F.2d 153 (C.A. 4), certiorari denied, February 24, 1975, No. 74-607; *Equal Employment Opportunity Commission* v. *Louisville and Nashville R. Co., supra*; *Equal Employment Opportunity Commission* v. *Kimberly-Clark Corp.*, 10 FEP Cases 38 (C.A. 6); *Tufi* v. *McDonnell Douglas Corp.*, C.A. 8, No. 74-1890, decided May 27, 1975.

We fully stated our views with respect to this issue in our Memorandum in Opposition to the petition for a writ of certiorari in *Cleveland Mills*, and we rely here on that Memorandum.[1]

It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULIA P. COOPER,
Acting General Counsel,
Equal Employment Opportunity Commission.

JUNE 1975.

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[1]We have sent copies of the Memorandum to petitioners' counsel.

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